

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CHARLES BRYANT, individually and as next friend and guardian of D.B., AVA GEORGE, individually and as next friend and guardian of B.G., CHANIN HOUSTON-JOSEPHAT, individually and as next friend and guardian of A.J., LISA HUGHES, individually and as next friend and guardian of J.R., CARMEN PENA, individually and as next friend and guardian of G.T., VIVIAN PRESLEY, individually and as next friend and guardian of D.P., and JAMIE TAM, individually and as next friend and guardian of S.T.,

Plaintiffs,

v.

NYS EDUCATION DEPARTMENT; DAVID M. STEINER, in his capacity as Commissioner of Education of the New York State Education Department, and THE NEW YORK STATE BOARD OF REGENTS

Defendants.

DECLARATION

10-CV-0036

GLS/RFT

Kelly L. Munkwitz, being a duly licensed attorney in the State of New York and an Assistant Attorney General in the offices of Andrew M. Cuomo, Attorney General of the State of New York, declares:

1. I am an Assistant Attorney General and appear in this action on behalf of Andrew M. Cuomo, Attorney General of the State of New York, the attorney for defendants. I offer this declaration in opposition to plaintiffs' motion for a preliminary injunction and in support of

defendants' motion to dismiss pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure.

2. As an Assistant Attorney General, I also represent the defendants in the proceeding Alleyne v. New York State Educ. Dept., 06-CV-994 (N.D.N.Y), which is also before this Court. Like the plaintiffs in Alleyne, plaintiffs here challenge regulations adopted by the New York State Board of Regents, which initially limited and now prohibit the use of painful aversive interventions of New York State school children.

3. As counsel for the defendants in Alleyne, I deposed James A. Mulick, Ph.D., who was designated by the Alleyne plaintiffs as an expert witness. A true and correct copy of the relevant portions of Dr. Mulick's October 10, 2008 confidential deposition transcript are annexed hereto as Exhibit A.

4. As counsel for the defendants in Alleyne, I also deposed Matthew Israel, who is the founder and Executive Director of JRC. A true and correct copy of the relevant portions of Dr. Israel's September 22, 2008 confidential deposition transcript are annexed hereto as Exhibit B.

5. I respectfully submit that the annexed exhibits, the accompanying Declaration of Patricia J. Geary, with exhibits, the accompanying Declaration of Rebecca H. Cort, with exhibits and the accompanying Memorandum of Law demonstrate that plaintiffs are not entitled to a preliminary injunction. I further submit that based upon the deficiencies in the complaint, outlined in the accompanying Memorandum of Law and this Court's Memorandum-Decision and Order in Alleyne v. New York State Educ. Dept. defendants' motion to dismiss should be granted.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Dated: March 2, 2010
Albany, New York

/s/ Kelly L. Munkwitz
Kelly L. Munkwitz